LEONG SZE HIAN

v.

TEO AI CHOO (S) & ANOTHER CASE

HIGH COURT, SINGAPORE
AP RAJAH J
[SUIT NOS. 2086 & 2353 OF 1982]
24 FEBRUARY 1984

TRUSTS: *Claim for declaration of trust - Whether property trust property - Whether claim enforceable - Whether proof by oral evidence sufficient.*

In Suit 2086 of 1982, the plaintiff claimed against the defendant for a declaration that the defendant was the trustee of the property known as 59 Walmer Drive, Singapore ("the property"), for the benefit of the plaintiff, and for an order that the defendant transferred the property to him. In Suit No. 2353 of 1982, the plaintiff (the defendant in Suit No. 2086) claimed as owner, both registered and beneficial, against the defendant (the plaintiff in Suit No. 2086) for possession of the property and for damages. The two suits were consolidated, suit No. 2086 to be tried first. The property had originally been in the name of the plaintiff (in suit 2086). It was transferred to the defendant in November 1979.

The defendant claimed that the transfer was by way of sale, and that, in any event the plaintiff's claim was unenforceable and/or void as there was no note or memorandum in writing of the alleged agreement for a trust sufficient to satisfy the Statute of Frauds.

Held:

[1] The transfer to the defendant was not by way of sale but was on trust for the plaintiff. From the evidence it was clear that at the time of the signing of the sale contract the defendant had no desire or intention to buy the property. She merely intended to provide monies for the plaintiff to pay off a mortgage on the plaintiff's house by means of a loan from her employers.

[2] The fall of the evidence is such as to prevent the defendant from using the Statute of Frauds in such a way as to prevent the plaintiff from proving his case. The plaintiff was competent to prove by parol evidence that the land was conveyed upon trust for him and the trust thus established was an express trust. The statute does not prevent the proof of a fraud; and it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself.

[Judgment for the plaintiff.]

Cases referred to:
Shales v. Shales [1701] 22 ER 1191
Skett v. Whitmore [1705] 22 ER 1211
Willis v. Willis [1740] 26 ER 443
Smith v. Mathews [1860] 45 ER 831
Rochefoucauld v. Boustead [1897] 1 Ch 196

For the plaintiff - Ronnie Quek Cheng Chye; M/s. Shook Lin & Bok
For the defendant - K.S. Chung; M/s. Chung & Co.

JUDGMENT

AP Rajah J:

The plaintiff's claim in Suit 2086 of 1982 against the defendant is for a declaration that she is the trustee of the property known as 59 Walmer Drive, Singapore (the property) for his benefit and for an order that she transfers the property to him forthwith upon the payment by the plaintiff of monies due or owing under the legal mortgage of the property. To this claim her response is that she bought the property outright from the plaintiff at the price of $95,000 and that in any event the claim is unenforceable by virtue of the Statute of Frauds. In Suit No. 2353 of 1982 the defendant is the plaintiff and her claim, as owner both registered and beneficial, against the defendant (he being the plaintiff in Suit No. 2086 of 1982) is for possession of the property and for damages at $1,000 per month from 12 June 1982 until payment or delivery of possession whichever is the later. The suits having been consolidated was tried by me on 18 & 19 October 1983 and on 23, 24, 25, 26 & 27 January 1984. It was agreed that the suit No. 2086 of 1982 be tried first.

The plaintiff, Leong Sze Hian and the defendant, Teo Ai Choo (s), first came to know one another in 1971. The plaintiff was in the Pre-U II class of Raffles Institution in 1971 and it was then that she joined its Pre-U I class. The plaintiff, having completed his Pre-U II examinations, sought employment in the private sector whereas the defendant went on to the University of Singapore in 1973 where she read Architecture. By now the friendship, which had been struck up at Raffles Institution, had ripened into one of "steady boy friend and girl friend". The defendant, after qualifying as an architect at the University, joined the professional staff of the Urban Renewal Authority (URA) in 1978 as an architect. By the time she had joined the URA the parties were seeing each other practically every day and were introducing themselves as fiancees. They were also staying, from time to time, in each other's parents' home and it was generally accepted by their parents that they would get married one day. They were so close one to the other that, while she was still studying at the University, and he working, they had a joint account with the Chartered Bank. Also her father and that of the plaintiff were joint beneficiaries of the plaintiff's Central Provident Fund account. How deeply in love and how committed she was to the plaintiff, the letters she wrote to him from Hawaii (2AB) bear ample testimony.

The plaintiff's father was the original owner of the property where the family had been living since 1955. He transferred the property to the plaintiff in January 1977 and he and his wife continued to live there with him. The Plaintiff, soon after the transfer, mortgaged it to the Overseas Union Trust Limited (OUT) for $80,000. He was unable to meet his commitments under the mortgage and was constantly in arrears with his payments. The defendant knew of his financial difficulties and of the persistent demands of OUT for payment of the arrears due under the mortgage.

On 15 July 1979 (1AB7) OUT wrote to their solicitors as follows:

> We refer to your letter dated 29 May 1979 and have to advise that no attempt has been made to settle the arrears of $3,185 representing instalments for the months of April (part)/ July 1979. Please proceed to dispose of the property by public auction as provided in the Mortgage.

and sent a carbon copy of the letter to the plaintiff. It so happened that when he received this letter the defendant was with him and at his invitation read the letter. At this moment of time the plaintiff's father was, and had been for some time quite ill.

Both their account of events up till this point of time do not materially differ but on the question of as to how and why she became the registered owner of the property their accounts do not agree.

Plaintiff's Account

On reading the said letter of 15 July the defendant, because of the close relationship then existing between them, voluntarily proposed to him that she enquire from the URA whether she could possibly obtain a loan from them for his benefit to enable him to discharge the aforesaid mortgage. To this proposal he acceded.

Subsequently the defendant informed him that she had been advised by a solicitor, a Mr. Sim Mong Soo, as to how the said loan could be obtained by her from her employers for his benefit. The plaintiff was to transfer the property to her as if by way of sale and the loan was to be secured by a mortgage to Credit POSB. It was, therefore, agreed between themselves that he would, for the sole purpose of obtaining the said loan to discharge the aforesaid mortgage, transfer the property to the defendant as if by way of sale to her and that she would thereafter hold the property as trustee for his benefit. It was also further agreed between themselves that it would be for him to pay (1) all the instalments repayments in respect of the said loan; (2) all legal, stamp and other fees and expenses incurred in transfer of the property to her, and (3) all legal, stamp and other fees and expenses incurred in her mortgage of the property to Credit POSB to secure the loan. He was also to pay the property tax on the property and all PUB bills.

Either on 27 or 28 July 1979 both of them went to see Mr. Sim, the plaintiff for the first time, and instructed him accordingly. As the defendant was leaving for Hawaii on 16 August on scholarship for about two years, she signed a Power of Attorney before Mr. Sim in favour of her father on 31 July 1979 to enable him to complete the transaction. The defendant left for Hawaii on 16 August where she pursued her scholarship studies. She wrote often to the plaintiff and they telephoned each other frequently.

Defendant's Account

She was present when the plaintiff received the said carbon copy letter of 15 July 1979. He showed it to her and it was he who suggested to her that she should buy the property. She had no money of her own but she wished very much to help him because she did not want him, his father, who was very ill at that time, and his step-mother dehoused and stranded without a house to live in. In response she told him she would buy the property from him at $95,000 provided she could obtain a loan from the URA. She laid down the following terms as those on which she would buy the property:

(1) that the plaintiff would pay for all the legal costs and expenses involved in obtaining the loan;

(2) that the plaintiff would pay for the property tax on the property, PUB charges, telephone charges and all outgoings;

(3) that he would forgo the $2,000 being the difference between the contract price and her loan from URA, namely $93,000 (and that at a time when she had no idea as to the quantum of what her actual entitlement was nor the maximum possible loan which the Chairman of the URA could approve);

(4) that he would pay her a monthly rent of $500 while she was away in Hawaii pursuing her scholarship studies.

The plaintiff agreed to her terms and that it was on this basis she agreed to find out whether she could obtain the loan from the URA. On 18 July she sent her application for a loan of $95,000 which was approved at $93,000 after her departure.

The plaintiff's case is that pursuant to the aforesaid agreement and for the sole purpose of obtaining the said loan he signed the Contract of Sale dated 1 September 1979 (the Sale Contract) (1AB183-5) and transferred the property to her on 3 November 1979, as if by way of sale. She through her Attorney thereupon executed a legal mortgage in favour of Credit POSB for $93,000 repayable over a period of 30 years (the monthly instalment being $499) and obtained the said loan of $93,000 out of which she paid off the mortgage in favour of OUT for his benefit. Thereafter he has and is still reimbursing the defendant for the mortgage instalments due in respect of the said POSB loan and has paid (except for one half-year) and is still paying the property tax on the property and all other outgoings. Briefly the plaintiff's case is simply that the defendant, who in November 1979 was his intended spouse, is the trustee of the property for his benefit.

The defendant, for her part, denies strenuously that she was, at any time, or is a trustee of the property for the plaintiff as alleged or otherwise. In her defence she had pleaded that she paid the plaintiff the said sum of $95,000 - (whereas in truth the actual sum involved in the transaction was $93,000) as the agreed consideration for the property upon its transfer to her on 3 November 1979 as aforesaid. She then goes on to plead that, if there was such an agreement for a trust as alleged, then it is unenforceable and/or void as there is no note or memorandum in writing of such agreement sufficient to satisfy the Statute of Frauds.

In July 1979 the parties had known each other for about eight years and they were very much in love with each other, perhaps the defendant more so with the plaintiff than the plaintiff with her. There is no dispute that the defendant wished to help the plaintiff in his financial difficulties over his house. The dispute really is one over the form the help took. The plaintiff says that her desire was to help resolve his immediate financial difficulties not with the intent of buying the property from him but with that of providing him with the means to pay off the OUT and so prevent them from selling the property. On the other hand the defendant says that the help that she was to render the plaintiff was only incidental to her outright purchase from him in that with the monies so received he would be able to pay off the mortgage and to stay on in the house with his family until her return from Hawaii in about two years' time. Her Counsel asks the questions "what was in it for her" and "why should she have entered into a transaction which would have tied her up for 30 years and put her completely at the mercy of the plaintiff'. On the other hand Counsel for the plaintiff asks the question "why would the plaintiff sell his property to the defendant for $93,000 when he believed his property to be worth anywhere between $120,000 and $130,000 and this too minus the normal costs and disbursements which in the event amounted to about $6,600 which would have been payable by her both as purchaser and mortgagor and would the plaintiff' he asks "have agreed to sell the property, in effect, for a little over $86,000 and then punish himself further by agreeing to pay not only property tax on it and also a rental therefor to boot at the rate of $500 a month until the defendant's return from Hawaii in two year's time."

I accept the evidence of the plaintiff and reject that of the defendant (1) as to why the transfer of the property to her took place and (2) that the $500 a month he has been and is paying into her bank account is not a rent for the property but a reimbursement of the monthly instalment the defendant has to pay the URA for the loan. Against the background of their relationship even after his marriage, I accept his evidence as to why he applied for a Housing Board flat.

I am of the view that the deviations from and nonperformance of certain terms of the Sale Contract make it clear that it was not a normal straightforward sale as Mr. Sim would like one believe (*vide* his letter dated 17 June 1981 to the plaintiff (1AB117), his letter dated 15 March 1982 (1AB162) to Messrs Shock Lin & Bok, the present solicitors for the plaintiff and his letter dated 7 April 1982 to Messrs Chung & Co., the present solicitors for the defendant (1AB163)).

One has only to look at para. 2 and 5 of the Sale Contract in relation to the payment of the 10% deposit on the signing of the Sale Contract (which in fact was never carried out) and the giving of vacant possession to the purchaser on completion (which was in fact never effected) respectively and at his letters to the Property Tax Department (1AB87) dated 14 December 1979 which reads:

> Our client, Mr. Leong Sze Hian, has **transferred his title and ownership of the property** (emphasis is supplied) to his fiancee, Miss Teo Ai Choo for whom we also act. We would inform you that our client is presently still occupying the property

to come to the view that the Sale Contract did not set out the agreement of the parties, whichever view one takes of the evidence of the parties. If this was a sale for $95,000 on the terms stated in the Sale Contract one would have thought that (1) Mr. Sim would have insisted on the defendant paying him the $9,500 being the 10% deposit at the time of signing of the sale agreement; (2) he would not have permitted his client the plaintiff to complete the transaction without seeing to it that he was paid the $2,000 being the difference between the stated purchase price and the amount he was actually paid, and (3) he would have seen to it that his client the defendant would not have completed the transaction without obtaining vacant possession for her. Perhaps it was because of these deviations from the norm that Mr. Sim was constrained to get a latter of indemnity from his client the plaintiff dated 10 October 1979 (1AB50) to indemnify him which reads:

> I hereby confirm that the sale proceeds shall be used to discharge the mortgage amounting to $82,187.50 and to pay all necessary legal costs and disbursements and thereafter **the purchaser shall be under no liability whatsoever to me** (emphasis is supplied). I hereby also indemnify you against any loss or claim arising from the sale thereof.

On the underlined portion I don't understand what possible liability Mr. Sim could have envisaged that the defendant could have been under, in the instant case, to the plaintiff. On the indemnity I don't understand what possible loss or claim could arise from a straightforward sale against which he Mr. Sim as solicitor acting for the plaintiff, seeks protection. It will also be further noticed that although it is alleged by the defendant that both she and the plaintiff had agreed that all costs and disbursements with regard to both the sale to herself and the mortgage by herself to Credit POSB were to be paid by the plaintiff yet the Sale Contract as drafted by Mr. Sim makes no mention as to costs. In the absence of a special condition as to costs one must assume that the normal practice as to costs was to prevail, that is to say that the purchaser would have to pay all her full solicitor's costs plus stamp and registration fees on the Conveyance Deed.

Some of Mr. Sim's actions in the handling of this matter is a little difficult to understand, particularly his sending of the whole conveyancing file (he having acted for both parties in the sale and purchase) to the present solicitors for the defendant. One would have thought that at that time the proper course for Mr. Sim would have have been for him to retain the file and allow inspection of it to both sides.

On the evidence before me both documentary and oral, I find:

(1) the defendant, on seeing the carbon copy letter of 15 July 1979, voluntarily proposed to the plaintiff that she would enquire from her employers, the URA, whether she could obtain from them a loan with a view to helping the plaintiff to discharge the aforesaid OUT mortgage.

(2) that it was Mr. Sim Mong Soo who

(a) advised as to the conveyancing steps to be taken to obtain the loan from the URA to pay off the mortgage to OUT, and

(b) drew the documents in such a way as to indicate to the URA, the defendant's employers, and Credit POSB, the agents of the URA, that it was a normal straightforward sale and purchase of a property with the purchaser obtaining a loan from which the purchase price could be met;

(3) that she got approval for the maximum possible loan she could obtain, namely $93,000 instead of her normal entitlement of $77,000 based on her salary (see Exhibit D7);

(4) that the plaintiff paid all legal fees, stamp and registration fees incurred on the conveyance to the defendant and on the Mortgage by the defendant in favour of the Credit POSB;

(5) that according to the Stamp Office the value at the time of the alleged sale to the defendant was $115,000 and not $95,000 as stated in the Conveyance Deed. I accept the valuation of the Stamp Office as being the correct value of the property at the date of the sale. The additional $600 stamp duty was paid by the defendant's father on 15 July 1980 (1AB84) but for some reason best known to the defendant and her father, the plaintiff was not informed of this. It will be noted that long before 15 July 1980 the plaintiff had broken with the defendant;

(6) that the plaintiff has paid and is currently paying the property tax on the property since its transfer to the defendant except for one payment over which there was some mix-up;

(7) that the plaintiff has been and is paying into the defendant's account with her bank the sum of $500 every month since the transfer of the property;

(8) that the said sum of $500 is not rental for the property as claimed by the defendant;

(9) that the said $500 is being paid by way of reimbursement to the defendant for the monthly deduction of $499 from her salary by the URA as monthly payments under the Mortgage;

(10) that the parties broke off their relationship as lovers some time towards the end of December 1979, but continued corresponding until even after the plaintiff's marriage in December 1980;

(11) that the defendant came to know of the plaintiff's marriage in early 1981;

(12) that the plaintiff filed his caveat dated, 9 June 1981 (1AB115) and this because of what seemed to him to be the defendant's intention to sell the property as shown by the visit of defendant's sister, a Valuer, to the property for the purpose of valuing the property and by intending purchasers coming to the property to inspect it.

I have come to the conclusion that at the time of the signing of the Sale Contract the defendant had no desire or intention to buy the property. All that she wanted to do was to help provide monies for the person, with whom at that time she was head over heels in love with, to extricate himself from the persistent demands and threats of the mortgagees which if carried out could have resulted in the dehousing of her loved one, his ailing father and stepmother. I believe that active thoughts of reneging on the arrangement and keeping the property for herself first occurred to her some time during the first half of 1981, after she had come to know of the plaintiff's marriage. Now having reneged on her arrangement she is now denying the trust and relying upon the Sale Contract, the Deed of Conveyance to her and the Statute of Frauds.

This conclusion renders it necessary for me to consider whether the Statute of Frauds passed in 1677 affords a defence to the plaintiff's claim. The defendant says that it is necessary for the plaintiff to prove by some writing or writings signed by the defendant that not only the conveyance to her was subject to some trust, but also what that trust was. In support the very old cases of

(1) *Shales v. Shales* [1701] 22 ER 1191
(2) *Skett v. Whitmore* [1705] 22 ER 1211
(3) *Willis v. Willis* [1740] 26 ER 443, and
(4) *Smith v, Mathews* [1860] 45 ER 831

were cited. The answer to these cases is to be found in the Court of Appeal case of *Rochefoucauld v. Boustead* [1897] 1 Ch 196. On p. 206 of the Report Lindley LJ delivering the judgment of the Court of Appeal has this to say:

> ... It is further established by a series of cases, the propriety of which cannot now be questioned, that the Statute of Frauds does not prevent the proof of a fraud; and that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself. Consequently, notwithstanding the statute, it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so conveyed upon trust for the Claimant, and that the grantee, knowing the facts, is denying the trust and relying upon the form of conveyance and the statute, in order to keep the land himself. This doctrine was not established until some time after the statute was passed.

In my view the fall of the evidence before me is such as to prevent the defendant from using the statute of Frauds in such a way as to prevent the plaintiff from proving his case. The *Rochefoucauld* case supports me in the view that a trust thus established is an express trust. There will therefore be judgment for the plaintiff in his claim and costs. The order is to be settled by me in Chambers.

Also found at [1984] 2 CLJ 131